



DEPARTMENT OF TRANSPORTATION

4910-EX-P

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0406]

Commercial Driver's License Standards: Application for Exemption; C.R. England, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant C.R. England, Inc. (C.R. England) an exemption from the provisions in 49 CFR 383.25(a)(1) that require a commercial learner's permit (CLP) holder to be accompanied by a commercial driver's license (CDL) holder with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder performs behind-the-wheel training on public roads or highways. Under the terms and conditions of this exemption, a CLP holder who has documentation of passing the CDL skills test may drive a commercial motor vehicle for C.R. England without being accompanied by a CDL holder in the front seat. The exemption enables CLP holders to drive as part of a team and have the same regulatory flexibility that 49 CFR 383 provides for C.R. England's team drivers with CDLs. C.R. England believes that the exemption will allow these drivers to operate in a way that benefits the driver, the carrier, and the economy as a whole without any detriment to safety.

DATES: The exemption is effective from 12:01 a.m., [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m., [INSERT DATE TWO YEARS FOLLOWING PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

Docket: For access to the docket to read background documents or comments submitted to the notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49

CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

C.R. England is a carrier that transports temperature-sensitive freight. It provides CDL training for its drivers in partnership with Premier Truck Driving Schools in five locations (Burns Harbor, IN; Dallas, TX; Fontana, CA; Richmond, IN; and Salt Lake City, UT). C.R. England seeks an exemption from 49 CFR 383.25(a)(1) that would allow CLP holders who have successfully passed a CDL skills test and are thus eligible to receive a CDL, to drive a truck without a CDL holder being present in the front seat. This would allow a CLP holder to participate in a revenue-producing trip back to his or her State of domicile to obtain the CDL document, as the CDL can only be issued by the State of domicile in accordance with Part 383.

C.R. England advised that FMCSA is aware of the trucking industry's need for qualified and well-trained drivers to meet increasing shipping demands. C.R. England believes that 49 CFR 383.25(a)(1) limits its ability to efficiently recruit, train, and employ new entrants to the industry. Prior to the implementation of section 385.25(a)(1), States routinely issued temporary CDLs to drivers who passed the CDL skills test. The temporary CDL allowed C.R. England time to route the new driver to his or her State of domicile to obtain the permanent CDL and place the new driver into an on-the-job training position with a driver-trainer. The driver-trainer supervised and

observed the new driver, but was not required to be on-duty and in the front seat at all times. Thus, the new driver became productive immediately, allowing more freight movement for C.R. England and compensation for the new driver.

C.R. England contends that compliance with the CDL rule prevents it from implementing more efficient operations. The rule places C.R. England in the untenable position of either sending the CLP holder home without having hired him or her (because the person does not yet have a CDL) with no assurance that the driver will remain with C. R. England after obtaining the CDL; or, hiring the CLP holder and sending him or her home in an unproductive non-driving capacity. Granting the exemption would allow the CLP holder to drive as part of a team on that trip, resulting in reduced costs and increased productivity.

C.R. England asserts that the exemption would be consistent with the Agency's comments in the preamble to the final rule adopting § 383.25 that "FMCSA does not believe that it is safe to permit inexperienced drivers who have not passed the CDL skills test to drive unaccompanied." (76 FR 26854, 26861 May 9, 2011). The exemption sought would apply only to those C.R. England drivers who have passed the CDL skills test and hold a CLP. C.R. England believes that the exemption would result in a level of safety that is equivalent to or greater than the level of safety provided under the rule. The only difference between a CLP holder who has passed the CDL skills test and a CDL holder is that the latter has received the actual CDL from a State Driver Licensing Agency.

Public Comments

On November 28, 2014, FMCSA published notice of this application and requested public comment (79 FR 70916). The Agency received 274 comments representing various transportation interests in response to the proposed exemption. Eleven comments received in support of the exemption were from AAA School of Trucking; American Trucking Associations (ATA); C.R. England; Katlaw Truck Driving Schools; U. S. Truck Driver Training School, Inc.; Utah Trucking Association; an anonymous truck driver training school; and four individuals. Among the 257 respondents opposing the exemption were Advocates for Highway and Auto Safety (Advocates); American Association of Motor Vehicle Administrators (AAMVA); Commercial Vehicle Safety Alliance (CVSA); Owner-Operator Independent Drivers Association (OOIDA); Apex CDL Institute; and individual drivers and driver trainees. The Commercial Vehicle Training Association (CVTA) and the California Trucking Association (CTA) were among 6 respondents who did not indicate opposition or support for the exemption. CVTA commented that before considering C.R. England's exemption, the FMCSA must first clarify its regulations regarding issuance of a CDL. The CTA submitted a petition for an exemption to allow States the option to waive the domicile requirements in 49 CFR sections 383.25(a)(2), 383.71(a)(2)(vi), and 384.212.

AAA School of Trucking commented that "As a licensing center, we see graduates all the time waiting for the plastic license to be issued, when they are ready to drive. The extensiveness of the training, which in our case is thorough regardless of licensing concerns, still is irrelevant to the issue at hand."

The ATA commented that “Because such drivers have already successfully passed both knowledge and skills tests, they could be presumed to have demonstrated safety performance equally as safe as a driver holding a CDL. Only formalities in the drivers’ state of domicile prevent the driver from already holding such a credential. Therefore, ATA encourages FMCSA to grant the proposed exemption.”

C.R. England commented that “The exemption is not seeking a reprieve from any testing or training standards, but instead is seeking to allow qualified drivers to begin providing for their families rather than having to cut through unnecessary bureaucratic red tape. Additionally, if the FMCSA believes that this exemption is more easily and consistently enforced if the exemption applies to all similarly situated drivers, C.R. England would support broadening the exemption request.”

Katlaw Truck Driving Schools commented that “All they are asking is that an out of state candidate who passes the skills test is allowed to go to work immediately as a licensed driver in the same way that an in state candidate can.”

Utah Trucking Association commented that “The exemption is merely seeking to eliminate red tape and inefficiency.”

An anonymous respondent commented by stating “I do not see a reason why this exemption would not only be granted to C.R. England, but to any other individual or carrier that is similarly situated.”

Mr. Matthew Crawford commented that “I support the exemption providing the company has a strong documentation in safety and compliance department.”

Advocates, AAMVA, APEX CDL Institute, CVSA, and OOIDA opposed the exemption. The remaining 252 comments in opposition were from truck drivers, truck

driver-trainers, and individuals. These respondents do not believe that it is safe for a CLP holder to operate a CMV without the supervision of a CDL driver-trainer in the front seat of the truck.

Advocates commented that “When a CDL holder is not in the front seat of the truck observing the actions of the CLP holder, the driver cannot provide the supervision as required by the federal regulation. When not present in the front seat of the vehicle, the CDL holder is not focused on the task of driving and cannot give the CLP holder critical insight and advice specific to situations encountered by the CLP holder during the trip. This type of unique guidance is invaluable in teaching and training novice drivers, forming good driving habits and can help prevent a crash.”

APEX CDL Institute commented that “It has nothing to do with CRE’s shortage of drivers.....it has everything to do with their running a driver program consisting of indentured servants and their desire to maintain control over them.”

AAMVA recommended that “FMCSA not grant this exemption under the determination that such an exemption would not achieve a level of safety equivalent to the level that would be achieved by current FMCSRs.” “AAMVA feels that any additional documentation requirements would contribute to substantial cost being borne by the states, additional administrative burden in issuing documentation to satisfy the return trip to the State of domicile, and open the commercial transportation network up to additional instances of document fraud.”

CVSA summarized its opposition to the exemption by stating that “granting yet another regulatory exception only serves to confound law enforcement and industry’s understanding of the rules. Every exception and change to regulations requires additional

training for inspectors, resulting in the potential for a higher level of confusion surrounding the applicability of the regulations.”

OOIDA stated that “OOIDA, as a general policy, does not believe FMCSA should exempt large motor carriers from the agency’s CDL training-related regulations.”

OOIDA further stated that “Given the open nature of FMCSA’s driver training rulemaking, it is certainly conceivable that the issues raised by CRE in its exemption request could be considered under that process, along with the broad scope of issues covered under the process by which a new driver obtains a CDL.”

Mr. Roy Moore wrote that “I think this proposal would be a grave mistake. As a 27 + year driver I’d say putting someone with No practical experience on the road without a trainer is a terrible mistake.”

Mr. Brian Riker, a former CDL examiner argued that “It is not advisable to allow a CDL permit holder to operate a vehicle without direct, front seat supervision. This is a basic design function incorporated since the inception of the CDL program. When you reduce this to the most basic level, CR England wishes to have their “trainer” on their break in the sleeper berth, sleeping, so they may be ready to drive when the student has run their hours out. How can that be construed as training if the instructor is sleeping or otherwise occupied and not directly observing and correcting the students behavior?” All comments are available for review in the docket for this notice.

FMCSA Response and Decision

The premise of respondents opposing the exemption is that CLP holders lack experience and are safer drivers when observed by a CDL driver-trainer who is on duty and in the front seat of the vehicle. The fact is that CLP holders who have passed the

CDL skills test are qualified and eligible to obtain a CDL. If these CLP holders had obtained their training and CLPs in their State of domicile, they could immediately obtain their CDL at the State driver licensing agency and begin driving a CMV without any on-board supervision. There is no quantitative data or other information that having a CDL holder accompany a CLP holder who has passed the skills test improves safety. Because these drivers have passed the CDL skills test, the only thing necessary to obtain the CDL is to apply at the Department of Motor Vehicles in their State of domicile.

FMCSA has evaluated C.R. England's application for exemption and the public comments. The Agency believes that C.R. England's overall safety performance as reflected in its "satisfactory" safety rating, will enable it to achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption (49 CFR 381.305(a)). The exemption is restricted to C. R. England's CLP holders who have documentation that they have passed the CDL skills test. The exemption will enable these drivers to operate a CMV as a team driver without requiring the accompanying CDL holder be on duty and in the front seat while the vehicle is moving.

Terms and Conditions of the Exemption

Period of the Exemption

This exemption from the requirements of 49 CFR 383.25(a)(1) is effective during the period of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE TWO YEARS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The exemption will expire on [INSERT DATE TWO YEARS AFTER PUBLICATION IN THE FEDERAL REGISTER], 11:59 p.m. local time, unless renewed.

Extent of the Exemption

The exemption is contingent upon C.R. England maintaining USDOT registration, minimum levels of public liability insurance, and not being subject to any “imminent hazard” or other out-of- service (OOS) order issued by FMCSA. Each driver covered by the exemption must maintain a valid driver’s license and CLP with the required endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

Preemption

During the period this exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with the exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

FMCSA Accident Notification

C.R. England must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while utilizing this exemption. The notification must be by email to MCPSD@DOT.GOV, and include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,
- c. Driver’s name and driver’s license number,
- d. Vehicle number and State license number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,

- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

Termination

The FMCSA does not believe the CLP-holders covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Issued on: June 3, 2015.

T. F. Scott Darling, III,
Chief Counsel.

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